IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.1 of 1996

Reserved on: September 20, 2007

Decided on:November 14, 2007.

Hirde Ram & Anr. ***.....Appellants.***

VERSUS

Tiki & Anr. ***.....Respondents.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants: **Mr.Rakesh Jaswal, Advocate.**

For Respondent No.1: **Mr.K.D.Sood, Advocate.**

Kuldip Singh, Judge

This appeal is directed against the judgment, decree dated 1.9.1995 passed by learned Additional District Judge, Kullu, District Kullu, in Civil Appeal No.51 of 1994 reversing the judgment, decree dated 14.9.1994 passed by learned Senior Sub Judge, Lahaul-Spiti, exercising the powers of Sub Judge 1st Class, Kullu in Civil Suit No.50 of 1990.

2. The facts, in brief, as emerge from the plaint, are that Tiki respondent No.1 filed a suit for declaration regarding land comprised in Khasra No.8272 situate at Phati and Kothi Kais, District Kullu. She has also prayed for possession in case Court comes to the conclusion that during the pendency of the suit appellants and

---

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

respondent No.2 have dispossessed her from the suit land. It is the case of Tiki that her mother Dodi was earlier married to Teju and she was born from that union. Teju died and Dodi married to Ablu. She lived with Dodi and Teju and served both of them. Ablu executed a registered Will dated 12.1.1987 in her favour of land comprised in Khasra No.8172. Ablu died on 15.2.1990, Dodi also died 2 ½ years prior to the institution of the suit. She is owner in possession of the suit land. The appellants and respondent No.2 claim suit land on the basis of some Will of Ablu. They are threatening to interfere in possession of the suit land. Ablu never executed any Will in favour of appellants and respondent No.2. On these grounds, Tiki respondent No.1 filed the suit.

3. The suit was contested by appellants No.1 and 2 by filing written statement. They took preliminary objections of valuation, estoppel and claimed Will dated 19.10.1989 of Ablu in favour of appellant No.1 Hirde Ram. On merits, it has not been denied that Dodi was earlier wife of Teju and after the death of Teju she married to Ablu and Tiki is the daughter of Dodi and Teju, but they denied Will dated 12.1.1987 of Ablu in favour of Tiki. Tiki filed replication to the written statement filed by appellants No.1 and 2 and denied case set up by them in their defence. She reiterated her stand which was taken by her in the plaint. The respondent No.2 Gwalu Ram was proceeded ex-parte and he did not contest the suit. The trial Court dismissed the suit on 14.9.1994. Tiki filed appeal which has been allowed by learned

Additional District Judge by impugned judgment, decree. Hence, appellants No.1 and 2, who were defendants No.1 and 2, are in appeal in this Court.

4. The appeal has been admitted on the following substantial questions of law:-

i) *Whether in the facts and circumstances of the case the findings of the learned appellate Court are based on vitiated inferences, perverse and unsustainable in law*?

ii) *Whether the findings arrived at by the learned appellate Court are based on no evidence overlooking and misreading the oral evidence available on the record*?

5. I have heard the learned counsel for the parties and gone through the record. Mr.Rakesh Jaswal, learned counsel for the appellants, has submitted that the appellants have proved registered Will dated 19.10.1989 Ext.D-1 of Ablu in favour of Hirde Ram and he further submitted that appellant No.1 is owner in possession of suit land. Mr.K.D.Sood, learned counsel for respondent No.1, has supported impugned judgment and decree.

SUBSTANTIAL QUESTIONS OF LAW NO.1 & 2:

6. The substantial questions of law No.1 and 2 are interconnected and, therefore, both of them are being disposed of collectively. The admitted case of the parties is that Tiki respondent No.1 is daughter of Dodi and Teju. After the death of Teju, Dodi

married to Ablu. Ablu died on or about 15.2.1990. Tiki is claiming estate of Ablu on the basis of registered Will Ext.PW-2/A dated 12.1.1987. PW-2 Nanak Chand is the scribe of Will Ext.PW-2/A, PW-3 Jeet Ram, attesting witness of Will Ext.PW-2/A, has proved the execution of said Will. Appellant No.1 Hirde Ram is claiming the property of Ablu on the basis of Will Ext.D-1 of Ablu in his favour. There is reference of Will of Ablu in favour of Tiki even in the impugned Will Ext.D-1. Moreover, Hirde Ram in his statement has admitted execution of Will by Ablu in favour of Tiki. Thus, it can be safely held that Ablu executed Will Ext.PW-2/A in favour of Tiki. The question is whether Ablu has executed Will Ext.D-1 in favour of appellant No.1 Hirde Ram. A Hindu Will is to be executed in accordance with Section 63 of the Indian Succession Act. The propounder of the Will is required to explain suspicious circumstances, if any, connected with the Will. The execution and authenticity of the Will Ext.D-1 is to be seen in this context.

7. DW-2 Mani Ram has stated that Ext.D-1 was scribed by Bhubneshwar at the instance of Ablu. This was read over to Ablu who after accepting its correctness put his signatures in his presence as well as in the presence of Motu Ram. Thereafter, he and Motu Ram signed as witnesses. At the time of writing Ext.D-1 Ablu was in sound disposing mind. Thereafter, he appeared before Tehsildar who also read over Ext.D-1 to him and there also Ablu accepted its correctness. The attestation of Will Ext.D-1 by DW-2 Mani Ram and Motu Ram

witnesses is not in accordance with Section 63 of the Indian Succession Act. DW-2 has nowhere stated that he and Motu Ram signed the Will as witnesses in presence of Ablu. He has made general statement that he and Motu Ram signed the Will. The statement of DW-2 Mani Ram, attesting witness of Will, is otherwise not reliable. As per him, he is resident of a place which is at a distance of about 10-12 kilometers from the village of testator, whereas Hirde Ram has admitted that about 100 families reside in village Gahar which is the village of testator. It has not been explained why Ablu opted for attesting witness like DW-2 Mani Ram residing at a distance of 10-12 Kilometers from his village in preference to the local residents of village Gahar. The other marginal witness has not been produced. In fact, Mani Ram has admitted in his statement that he is a witness in 15-20 documents. He has stated that Rs.10-20 are given to become a witness. It is, thus, clear that Mani Ram is a professional witness. It appears Will Ext.D-1 has been prepared by Hirde Ram in connivance with marginal witnesses and the scribe. It is quite possible that after the execution of Will Ext.PW-2/A Ablu might not be looked after properly, therefore, he thought of selling the suit property. It appears some how Hirde Ram appellant No.1 came to know this fact and, therefore, he got this fact recorded in Ext.D-1 in connivance with scribe and marginal witnesses of Ext.D-1 but on this ground alone Will Ext.PW-2/A in favour of Tiki cannot be ignored.

8. Hirde Ram appeared as DW-1 and he has stated that he has been serving in General Hospital, Chandigarh since 1966. He has also stated that his family is residing with him at Chandigarh. It is not his case that Ablu was residing with him at Chandigarh. It has not been proved how Hirde Ram was serving Ablu at Kullu. There is nothing worth believing material on record that Hirde Ram ever sent money to Ablu for his upkeep and maintenance. In Will Ext.PW-2/A dated 12.1.1987 of Ablu in favour of Tiki there is reference that she was maintaining him. The Will Ext.D-1 is dated 19.10.1989. There is nothing on record to show what special service Hirde Ram had rendered to Ablu within the gap of 2 ½ years from the execution of Will Ext.PW-2/A which prompted Ablu to execute Will Ext.D-1 in favour of Hirde Ram. In Will Ext.D-1 nothing has been stated since when Hirde Ram served Ablu. It has also not been mentioned how Hirde Ram was connected with Ablu. There is nothing in Ext.D-1 whether Hirde Ram was related to Ablu or he was a friend of Ablu. The appellant No.1 Hirde Ram claims remote relationship with Ablu when he states that one of the sisters of testator was married to some of his grand father, but he could not even state the name of such sister of Ablu. Hirde Ram has stated that he was present at the time of execution of impugned Will in his favour. Ablu died in the house of Chetu Ram. No other evidence has been led by Hirde Ram to prove his remote relationship with Ablu. In absence of relationship or other type of acquaintance it is not understandable under what circumstances Ablu

executed Will Ext.D-1 in favour of Hirde Ram. These suspicious circumstances have not been explained by Hirde Ram.

9. The impugned Will Ext.D-1 was allegedly scribed by DW-3 Bhubneshwar Dutt on 19.10.1989 at Kullu. As per Ext.D-1 this document was scribed by DW-3 as document No.567 on 19.10.1989. Bhubneshwar Dutt in his statement has admitted that on the same day Ablu got scribed from him an agreement of sale of the suit land in favour of appellant No.2 Asha Devi wife of appellant No.1 Hirde Ram agreeing to sell suit land in her favour for a sum of Rs.80,000 out of which Rs.75,000 was paid as earnest money, the balance amount of Rs.5000 was to be paid at the time of registration of the sale deed. In case Ablu had executed Will Ext.D-1 on 19.10.1989 in favour of Hirde Ram then there was no necessity of executing agreement for sale of the suit land by Ablu in favour of Asha Devi appellant No.2 wife of Hirde Ram for a consideration of Rs.80,000 and receiving Rs.75,000 out of the sale consideration as earnest money. This agreement is entered at Sr.No.569 of the Register and is dated 19.10.1989, an extract of Register is Ext.PX on record. This circumstance of preparation of two documents i.e. impugned Will Ext.D-1 in favour of Hirde Ram and agreement of sale of the same property in favour of his wife is sufficient to reject the Will Ext.D-1 inasmuch as once Will has been executed of a property on one date then ordinarily the testator on the same date will not enter into an agreement for sale of same property with the wife of that person in whose favour the Will has been

executed. This is a very strong suspicious circumstance which has not been explained by the propounder of the Will.

10. It has been submitted by learned counsel for the appellants that Will Ext.D-1 is registered, therefore, it cannot be said that Ablu did not execute such Will. The mere registration of a Will is not proof of its due execution and simply the Will is registered, this in itself is not sufficient to explain suspicious circumstances connected with the Will. The learned Additional District Judge has rightly appreciated the material on record in rejecting Will Ext.D-1. It has not been pointed out what material evidence has been overlooked by the learned Additional District Judge and how the evidence has been misread. No case for interference has been made out. The substantial questions of law No.1 and 2 are decided against the appellants and in favour of respondent No.1 plaintiff.

11. No other point was urged.

12. The result of the above discussion, the appeal is dismissed with costs.

November 14, 2007. ***(Kuldip Singh)***
(soni) ***Judge***